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COMMENT ON FR. DRINAN'S ARTICLE ON ABORTION LAWS

JOHN B. GEST *

In his article, "The Morality of Abortion Laws," Rev. Robert J. Drinan, S.J., states, in his conclusions, that, "there is no such thing as a 'Catholic position' on the jurisprudence of abortion laws," and that "Catholics are free to advocate any one of the three options available—strict legal prohibition of abortion, the Model Penal Code, or abortion on request." 2

In reply we submit that there is one, and only one, tenable Catholic position, and it is implicit in the definition of abortion as the directly intended termination of pregnancy otherwise than by a live birth. Catholic lawyers must stand inflexibly against any "liberalization" of abortion laws, because they would authorize the deliberate killing of innocent human beings.

In leading up to his conclusions, above set forth, Father Drinan presents some suggestions which we believe are irrelevant. For instance, he suggests the relevance of the Vatican II Declaration on Religious Freedom to the question of abortion, stating:

On the other hand, if one begins with the assumption that a significant minority or even majority of persons in America think that women should have a legal right to dispose of an unwanted pregnancy one must look for guidance in other assertions in the Declaration. If one can conclude that those who favor legalized abortion are rejecting a doctrine which in the final analysis is a Christian or sectarian teaching then the firm repudiation of all forms of coercion contained in the Declaration on Religious Freedom become relevant.3

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* Member of the Pennsylvania Bar.
1 14 Catholic Law. 190 (1968).
2 Id. at 198.
3 Id. at 193.
He then continues:

The Declaration urges that "in spreading religious faith and in introducing religious practices, everyone ought at all times to refrain from any manner of action which might seem to carry a hint of coercion or of a kind of persuasion that would be dishonorable or unworthy. . . ." 4

In answer, we assert that the Declaration cannot be interpreted as intending to stay the hand of the law in protecting the lives of innocent unborn children, or as treating their willful destruction in any way as entitled to the freedom to be accorded to religious practices. Indeed the same Vatican Council states that "from the moment of its conception life must be guarded with the greatest care while abortion and infanticide are unspeakable crimes" and "whatever is opposed to life itself, such as any type of murder, genoc...
(2) If any "two physicians, one of whom may be the person performing the abortion shall have certified in writing the circumstances which they believe to justify the abortion."

This means that an innocent human being would be sentenced to death by the unappealable fiat of two doctors acting as judges and jury and paid executioner—with no one to test the nature or statutory validity of the circumstances which they believe justify taking the life of the child.

Let us contrast the situation of the unborn child who is being subjected to the death sentence at the request of the mother and before this unusual court, with that of a person arrested under suspicion of a crime. From the moment of being taken into the custody of the police, the services of an attorney must be supplied. He is advised of his legal rights. If indicted, he has a right to appear in court with his lawyer, to have a jury, to test the qualifications of the jury, to be confronted by his accusers, and to cross-examine witnesses himself or through his attorney. In case of any error in the trial he has the right of appeal. And the rights proclaimed by the courts in these cases also apply to minors.

In the case of the unborn child, however, with striking contrast, the innocent, unborn child is afforded no protection of his right to live; no attorney to advise him, no guardian to appear and plead his helplessness before a court composed of two doctors (one of whom can become the paid executioner), no one to appeal the decision of this court.

Equally untenable is the suggestion that Catholics are free to advocate the third alternative measure suggested, i.e., abortion on request. This would mean the withdrawal of criminal sanctions for this crime when performed by physicians under prescribed conditions. The suggested benefits from this measure mentioned in the article are speculative only and not to be balanced against the lives of children whose death would be legalized by withdrawing criminal sanctions. No Catholic could ever advocate or condone the intentional destruction of an innocent human being.

We assert that there is a "Catholic position" on the jurisprudence of abortion, a non-negotiable position; not, indeed, an exclusively Catholic position, but one that should be held likewise by all those who believe in God as the Creator of life and who respect the moral law.

The Catholic position which we must maintain unflinchingly is that intentional abortion is an "infamy," and an unspeakable crime." Unfortunately, some Catholic laymen, including doctors, lawyers and legislators (some clergy, indeed!) evade their responsibility by failure to speak out publicly. They take the attitude that "[i]t is a pluralistic society and if the majority want it, let them have it." This is all wrong, of course. Catholic lawyers have a special responsibility to present to legislators, doctors, social workers and the public the case on behalf of unborn children and to uphold their right to live.

\footnote{Supra note 1, at 196.}
\footnote{Id. at 197.}